

LEGAL NEWSLETTER



IN THIS LEGAL NEWS
LETTER

**CONTINUAL
APPLICATION OF
VALUE-ADDED TAX
REDUCTION POLICY**
Page 2

**NEW REGULATIONS ON
UNEMPLOYMENT
INSURANCE**
Page 4

**TYPICAL CONTENTS OF
THE NEW CIRCULAR
GUIDING THE LAW ON
INTELLECTUAL
PROPERTY AND DECREE
ON INDUSTRIAL
PROPERTY**
Page 6

Message at the beginning of 2024

Mr. Nguyen Hung Quang - Founder and Managing Partner

2023 was a challenging year for the global and Viet Nam economy due to the consequences of the Covid-19 pandemic and the war in Europe. However, business opportunities are gradually opening up for enterprises with effective corporate governance and compliance control systems to meet national and international legal regulations, as well as productive mechanisms to ensure the effectiveness of legal regulations. However, to limit business risks, enterprises need to follow various rules set out in global trade, namely business administration criteria to meet Environmental, Social, and Governance (ESG), requirements for ensuring human rights in business (also known as responsible business - BHR), etc.

To attract large incorporations' investment, in 2023 and early 2024, Viet Nam has adopted many measures, among which include amending the Law on Land, the Law on Bidding, the Law on Price, the Law on E-Transactions, etc.; promulgating the National Power Development Plan for the period 2021-2030, with a vision to 2050 (PDP VIII). These new regulations will be effective from 2024, promising to promote economic development and increase trade and investment transactions in Viet Nam.

NHQuang&Associates is proud to contribute to the 2023 development of policies and laws that have a major impact on Viet Nam's economy. We will continue to devote legal analysis and research articles in the monthly Legal Newsletters to update Customers and readers on information and analysis to seize business opportunities and prevent possible legal risks. Also, we will update information about our new services or service delivery methods in line with current development direction. We hope you will find useful information in the Newsletters of 2024.

CONTINUAL APPLICATION OF VALUE-ADDED TAX REDUCTION POLICY

MY NGAN

On December 28, 2023, the Government issued Decree 94/2023/ND-CP on value-added tax (VAT) reduction policy under Resolution 110/2023/QH15 dated November 29, 2023 of the National Assembly (**Decree 94**). Decree 94 takes effect from January 1, 2024 to the end of June 30, 2024, with some notable contents as follows:

Firstly, regulating the scope of groups of goods and services eligible for VAT reduction. Accordingly, Decree 94 defines the VAT reduction subjects including all groups of goods and services with the current tax rate of 10%, except for some groups of goods and services, typically as follows:

- Telecommunication, financial activities, banking, securities, insurance, real estate trading, metals and products from prefabricated metals, mining products (excluding coal mining), etc. Details of this group are included in **Appendix I** enclosed with Decree 94;
- Goods and services subject to special consumption tax as specified in **Appendix II** promulgated together with Decree 94 such as cars with less than 24 seats, including cars carrying both people and goods with two or more rows of seats, with fixed partition design between passenger compartment and cargo compartment; all kinds of gasoline and so on;
- Information technology under the law on information technology as detailed in **Appendix III** promulgated together with Decree 94 such as portable data processing machines not exceeding 10 kg (for instance, laptops), machines combining two or more functions: printing, scanning, copying, faxing that can be connected to automatic data processing machines or to network, etc.

It should be noted that the reduction of VAT for each type of goods and services mentioned above shall be applied consistently for stages of import, production, processing, and commercial business. In addition, for the groups of goods and services in Appendices I, II, and III promulgated under Decree 94 which are: (i) not subject to VAT or (ii) subject to VAT of 5% under the provisions of the Law on VAT, the provisions of the Law on VAT shall be applied and such goods, services shall

not be eligible for VAT reduction.

Secondly, regulating the VAT reduction rate for each group of entities and the procedures to implement VAT reduction for each reduction level. Accordingly, Decree 94 specifies as follows:

- *For business establishments that pay VAT using the credit invoice method:* This type of entity is entitled to apply the VAT rate of 8% for goods and services eligible for VAT reduction. Regarding the implementation procedure, when issuing VAT invoices for the provision of goods and services eligible for VAT reduction, business establishments shall write “8%” on the “VAT rate” line; VAT amount payable; and the total amount payable by the buyer. Based on the VAT invoice issued, the business establishments selling goods or providing services shall declare output VAT, and the goods buyers and service users shall declare and deduct input VAT according to the reduced tax amount stated on the VAT invoice. It should be noted that, when goods and services are provided with different tax rates, the relevant VAT invoice must clearly state the tax rate of each goods or service.

- *For business establishments that pay VAT using the direct method (as a percentage (%) on revenue):* This type of entity shall be eligible for a 20% reduction in the percentage rate used as the basis for VAT calculation when issuing invoices for goods and services eligible for VAT reduction. When issuing invoices for the provision of goods and services eligible for VAT reduction, the business establishments shall write the full amount of the goods, and services before the reduction in the “Sum” column, the amount payable after the reduction (by 20% of the percentage rate on revenue) on the “Total amount” line, and the note: “an amount of..., equivalent to 20% of the percentage rate used as the basis for VAT calculation, is reduced according to Resolution No. 110/2023/QH15” on the invoice.



Comments and recommendations

Decree 94 is formulated based on inheriting the entire VAT reduction policy of Decree No. 44/2023/ND-CP dated June 30, 2023. The reduction of VAT under Decree 94 is one of the solutions developed to coordinate with other tax, fee, and charge solutions to facilitate enterprises to reduce production costs, increase profits, and increase the ability to stimulate demand. Therefore, enterprises need to update any information related to the group of subjects eligible for VAT reduction within the scope of this Decree, along with specific reduction levels for different groups of VAT declaration entities and the procedures for implementing VAT reduction to implement tax reduction policies properly and promptly in accordance with the Decree, ensuring their legitimate interests in business activities.

NEW REGULATIONS ON UNEMPLOYMENT INSURANCE

HONG NHUNG

In order to meet the practical situation and ensure compliance with new legal regulations on unemployment insurance (UI) and other related regulations, the Ministry of Labour - Invalids and Social Affairs issued Circular 15/2023/TT-BLDTBXH amending, supplementing some provisions of Circular 28/2015/TT-BLDTBXH providing guidelines for Article 52 of the Law on Employment and Decree 28/2015/ND-CP providing guidelines for the Law on Employment in terms of UI (**Circular 15**). Circular 15, taking effect from February 15, 2024, focuses on changes related to UI as follows:

Firstly, amending and supplementing cases for reservation of UI payment period. Accordingly, in addition to cases inherited from Circular 28/2015/TT-BLDTBXH for reservation of UI payment period such as an employee does not come to receive unemployment benefits, the decision on receipt of unemployment benefits is canceled, or the unemployment benefits are terminated during entitlement period, Circular 15 introduces some following amendments:

(i) Amending the case for reservation of UI payment period when an employee has outstanding months for which he/she has not yet enjoyed unemployment benefits. As per Circular 15, in the case that the UI payment period of an employee ranges from more than 36 months to a full 144 months, the unresolved period for unemployment benefits shall be reserved. In case the UI payment period exceeds 144 months, the unresolved period for unemployment benefits shall not be reserved. Therefore, in this case, Circular 15 has set the maximum limit for the UI payment period (144 months) instead of only providing the minimum UI payment period (36 months) as previously.

(ii) Supplementing cases for reservation of UI payment period when the social insurance agency certifies supplementary UI payment period for employees after termination of unemployment benefit entitlement, specifically:

- An employee has contributed UI premiums for 36 months or more, which is the basis to settle unemployment benefit entitlement: The supplementary UI payment period certified by the

social insurance agency will be reserved for calculating unemployment benefits when it fully satisfies the conditions as stipulated;

- An employee has contributed UI premiums for less than 36 months, which is the basis to settle unemployment benefit entitlement: The supplementary UI payment period certified by the social insurance agency equals (=) the number of months already considered for receiving unemployment benefits, plus (+) the number of months of UI payment certified as supplemented, minus (-) the number of months of UI payment corresponding to the months the employee received unemployment benefits, minus (-) the number of months of UI payment corresponding to the number of months temporarily suspended from enjoying unemployment benefits.

Secondly, amending and supplementing regulations on job-seeking notification. Circular 15 introduces some notable changes regarding the obligation of job-seeking notification for employees while receiving unemployment benefits, as follows:

(i) Expanding the cases where employees receiving unemployment benefits are not required to directly report their job-seeking activities monthly, such as men aged 60 and more, women aged 55 and more; maternity leave with confirmation from an authorized healthcare facility, implementing an employment contract with a definite term of fewer than three months, etc. Before Circular 15, these were types of employees exempt from monthly job-seeking notification.

(ii) Supplementing the responsibilities of the employees. Accordingly, despite not being required to directly make their job-seeking notification monthly, the employees must state the reasons thereof to the employment service center via phone calls, emails, faxes, etc., within three working days from the deadline for monthly job-seeking notification as stipulated.



Comments and recommendations

It is expected that Circular 15 will contribute to improving the applicable regulations on UI and assisting employees in accessing support policies. Individuals and organizations should promptly update the provisions of Circular 15 for timely application and compliance with the regulations and guidance of the Ministry of Labour - Invalids and Social Affairs. It should also be noted that the Forms included in the administrative procedure dossier received before the effective date of Circular 15 but not yet resolved will be processed in accordance with Circular 28/2015/TT-BLDTBXH.

TYPICAL CONTENTS OF THE NEW CIRCULAR GUIDING THE LAW ON INTELLECTUAL PROPERTY AND DECREE ON INDUSTRIAL PROPERTY

TUE DANG

On November 30, 2023, the Ministry of Science and Technology promulgated Circular 23/2023/TT-BKHCHN guiding the Law on Intellectual Property (**IP Law**) and Decree 65/2023/ND-CP guiding the IP Law on industrial property, protection of industrial property rights, and rights to plant varieties and State management of intellectual property related to the procedures for establishing industrial property rights and ensuring industrial property information (**Circular 23**). Circular 23 contains several notable contents for enterprises in the process of implementing procedures to establish rights to industrial property subject matters as follows:

Firstly, specifying cases in which applications are invalid. An application for registration of industrial property rights is considered invalid if:

- (i) The applicant *does not have the right to register* the industrial property rights under IP Law.
- (ii) The filing method is contrary to the provisions of Article 89, IP Law. For instance, a foreign enterprise having no production or business establishments in Viet Nam directly applying for registration of industrial property rights *without using a legal representative in Viet Nam* is considered contrary to the provisions of Article 89.
- (iii) The industrial property subject matter in the application *is not* protected by the State according to the IP Law. For example, an application to register the patent for a method to conduct business will be considered invalid.
- (iv) Patent applications are contrary to regulations on patent security control before registration in a foreign country, including cases in which international applications are filed directly with the International Office.
- (v) The applicant does not pay adequate fees and charges, including insufficient payment of the application fee, application publication fee, application examination fee, and search fee for application examination, except for search fee for application examination and substantive examination fees for patent applications if the application does not require substantive examination.

(vi) The application does not meet the formal requirements (having shortcomings) such as failure to meet the *requirements on the number of copies* for the required documents; failure to meet the *presentation requirements*; the trademark application *does not specify the trademark type* to be registered or lack a *trademark description*; *failure to classify* patents, industrial designs, trademarked goods or services, or provision of incorrect classification without the corresponding classification fee paid by the applicant; absence of a *valid authorization document* in the event that the trademark application is submitted through a representative, etc.

Secondly, adjusting some deadlines in the procedures of opposing industrial property applications, in particular:

- (i) *Time limit for applicants' response*: Previously, when the Intellectual Property Office of Viet Nam (**IP Viet Nam**) received a written opinion from a party regarding an industrial property application and considered this opinion to be justified, IP Viet Nam would notify the relevant applicant of this opinion and set a maximum time limit of one month from the notification date for the applicant to respond in writing. However, under Circular 23, the time limit for the applicant's response is set at a maximum of *two months* from the date when IP Viet Nam issued their notification, which is longer than that in the previous Circular.
- (ii) *Time limit for notification related to lawsuit proceedings at court*: If the opinion of the opposing party is related to the registration right of the applicant and IP Viet Nam notifies the opposing party to file a lawsuit at a competent court in accordance with the provisions of law on civil procedure, the opposing party shall submit a copy of the Court's notice of accepting the lawsuit case within *two months* from the date when IP Viet Nam issued their notice so that IP Viet Nam can consider suspending the examination process of the trademark application and wait for the results of the Court's dispute resolution. This period is one month longer than the previously prescribed period.

The foregoing time limit extension has facilitated both applicants and opposing parties to prepare documents for state agencies in the aforementioned case. It should also be noted that this change of time limit will apply to the opposition petitions filed from January 1, 2023 in accordance with the provisions of the IP Law but not yet handled by the IP Viet Nam.

Thirdly, supplementing the regulations on translating documents attached with opposition petitions into Vietnamese. Circular 23 stipulates that an opposition petition to industrial property applications *must be written in Vietnamese*. If an enterprise submits supporting documents attached to the opposition petition in a foreign language, *these documents must be translated into Vietnamese if requested by the IP Viet Nam*. Foreign enterprises dealing with cases involving foreign elements should pay attention to this regulation

when opposing trademark applications at IP Viet Nam. In practice, in a complicated case where various issues require clarification, such as proving a famous foreign trademark in Viet Nam, the foreign enterprise will need to submit several foreign supporting documents to IP Viet Nam to validate its arguments in the objection. To make the handling of opposition petitions at IP Viet Nam more effective and prompt, the opposing enterprises can proactively translate into Vietnamese some basic documents containing information directly pertinent to the argument presented in the opposition petition in advance, and immediately submit such Vietnamese translations with their opposition petition, without passively waiting for IP Viet Nam's later request. This will enable IP Viet Nam to timely review relevant information to evaluate the grounds for opposition and facilitate the timely resolution and protection of the interests of the opposing party.

Fourthly, specifying the "bad faith" element when filing a trademark registration application. Currently, the IP Law amended and supplemented in 2022 has mentioned but still lacks a specific definition for the "bad faith" element. Circular 23 then provides several indicators in cases of cancellation of trademark protection certificates if the trademark applicant demonstrates bad faith, specifically:

- (i) During filing a trademark application, the applicant *knows or has a ground to know* that his/her trademark is identical or similar to the extent that it is hard to distinguish from other *trademarks extensively utilized in Viet Nam or famous trademarks in other countries* with identical or similar goods or services; and
- (ii) The registration is intended to take advantage of the *reputation and prestige* of the trademark to gain profit; or *primarily to resell, license, or transfer registration rights* to the trademark holder; or to *prevent the trademark holder from accessing the market to limit competition*; or other acts *contrary to other fair trade practices*.

The scope of this provision is quite wide-ranging as it also considers the case of "*famous trademarks in other countries*". According to Circular 23, the "bad faith" element will also be reviewed *during the examination process of trademark applications*. This is in line with point b, clause 1, Article 117, the IP Law amended and supplemented in 2022, which stipulates that a trademark registration application *will not be granted with a protection title* if the trademark applicant has bad faith. With this regulation, enterprises that already possess trademarks in a foreign country but have not yet registered and commenced any business activities using their trademarks in Viet Nam will have a greater advantage in reclaiming legitimate rights and benefits for their trademark, which may have been pre-registered in Viet Nam by a third party. The above trademark cancellation applies to trademark applications filed from January 1, 2023.



Comments and recommendations

Circular 23 provides detailed guidelines for the IP Law and Decree 65/2023/ND-CP to help industrial property right holders protect their legitimate rights and interests more effectively. However, several enterprises may still encounter difficulties in applying some new regulations of the Circular. For instance, proving an act *contrary to fair commercial practices* is challenging as it concerns international commercial practices. In addition, enterprises must invest significant time in researching and evaluating the applicability of this regulation. Circular 23 takes effect from the date of promulgation, which is November 30, 2023. Enterprises should pay attention to the provisions of this Circular, including the instructions for the transitional clause, to promptly comply and mitigate legal risks in establishing and protecting their intellectual property rights.

AUTHOR TEAM



TANG MY NGAN

Legal Consultant



NGUYEN THI HONG NHUNG

Legal Consultant



LUU TUE DANG

Associate

EDITORIAL TEAM



LE MAI PHUONG

Legal Consultant



DANG HUYEN THU

Legal Consultant



NGUYEN THUY DUONG

Senior Associate

DESIGNER



NGUYEN HOANG AN

Please visit us at:



Ha Noi Office:
Villa B23, Trung Hoa - Nhan Chinh
Nguyen Thi Dinh Street, Nhan Chinh Ward
Thanh Xuan District, Ha Noi, Viet Nam
Tel: 84 24 3537 6939
Fax: 84 24 3537 6941
Web: www.nhquang.com

Ho Chi Minh City Branch:
First floor, Harmony Tower, No. 47-49-51
Phung Khắc Khoan Street, Da Kao Ward
District 1, Ho Chi Minh City, Viet Nam
Tel: 84 28 3822 6290
Fax: 84 28 3822 6290
Email: contact@nhquang.com